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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**K. J.,**

**Petitioner,**

**v.** **A125971**

**THE SUPERIOR COURT OF CONTRA COSTA COUNTY,** **(Contra Costa County Super. Ct. Nos. J0702212, J0702213)**

**Respondent;**

**CONTRA COSTA COUNTY CHILDREN AND FAMILY SERVICES BUREAU,**

**Real Party in Interest.**

**_____/**

K.J. (mother) has filed a writ petition under California Rules of Court, rule 8.452 that challenges an order terminating her parental rights as to her twin daughters E. and N. Mother contends (1) the court's conclusion that E. and N. would be at risk if they were returned to her custody is not supported by substantial evidence, (2) the court abused its discretion when it declined to grant more frequent visits, and (3) she was denied adequate reunification services. We reject these arguments and affirm the order terminating parental rights.

## I. FACTUAL AND PROCEDURAL BACKGROUND

In August 2007, mother gave birth to E. and N. Less than four months later on December 3, 2007, mother called a doctor complaining that E. was crying and wasn't moving her right arm. The doctor encouraged mother to bring E. in right away. Mother brought E. in two days later. Medical personnel took x-rays, but mother took E. and left before they could hear the results. It turned out that E.'s clavicle was fractured. The doctors called mother and asked her to bring both girls in for an examination.

Mother brought E. and N. in on December 7, 2007. N. had a subconjunctival hemorrhage on her left eye, a fractured tibia, and a fractured skull.

Dr. James Crawford, a board certified physician who specializes in recognizing child abuse, believed E.'s injury was "'of serious concern'" because it was an impact break. He opined that "'[E.] would not have just cried . . . she would have screamed.'" Dr. Crawford believed N.'s leg injury was equally troubling. The specific injury she suffered was "really scary, as someone would have to pull her really hard by the foot" to cause that type of injury.

Child protection authorities spoke with mother about the injuries E. and N. had suffered. She insisted she did not harm her children or do anything accidently that would have caused their injuries. Mother speculated that E.'s injuries may have occurred when her sister R. was caring for her. When the authorities insisted that they needed an explanation for the serious injuries the children had experienced, mother said casually, "'I don't know if we'll ever know.'"

Child protection authorities spoke with mother's sister R. She said she had cared for E. and N. recently, but that nothing happened. She speculated the children may have been injured when mother picked them up.

Based on these facts, on December 11, 2007, petitions were filed alleging E. and N. were dependent children within the meaning of Welfare and Institutions Code section

300.[1] At a detention hearing conducted the next day, the court found the children were at substantial risk for physical injury and ordered them removed from mother's custody. Subsequently, mother submitted to the petitions and the court found the allegations to be true.

The report prepared for the dispositional hearing uncovered some disturbing information. Mother admitted she had anger and temper problems, a characteristic that was underscored by recent incidents in her life. In July 2005, mother and another woman were involved in a shoplifting incident. When a sales associate followed mother and the woman out of the store to question them, mother kicked him in the leg, struck him in the head repeatedly, and hit him with her purse. Then in May 2007, while mother was pregnant with E. and N., mother was arrested for hitting the children's father.

In light of these incidents, and in light of the still unexplained cause of the injuries to E. and N., the dispositional report recommend that mother not be provided reunification services and that her parental rights be terminated. The trial court rejected that recommendation. It declined to terminate mother's parental rights and ordered that mother be provided reunification services. The court also ruled that mother could have unsupervised visits with E. and N.

After several continuances, a review hearing was set for February 19, 2009. The report prepared for that hearing showed mixed results. On one hand, mother had been provided and had successfully participated in a wide range of services including individual counseling, family counseling, parenting education and anger management classes, and parental coaching and assessment. According to the report, all the service providers provided favorable reports about mother's participation.

On the other hand, the report still expressed considerable unease with the fact that the *cause* of E.'s and N.'s injuries still remained unexplained.

The report also indicated mother's anger issues were still not resolved. On three separate occasions, mother had serious disputes with the relative who was caring for E.

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[1] Unless otherwise indicated, all further section references are to the Welfare and Institutions Code.

and N. According to the report, the relative, (a great aunt) said "mother had repeatedly gotten into heated arguments with her about the children, such that the mother threatened the relative caregiver on two of these occasions, and threatened and became physically aggressive on another occasion. . . . [T]he argument in which the mother [became] physically aggressive occurred in the relative caregiver's bathroom after the relative caregiver had asked the mother not to be so rough with the children." The serious problems with the mother were the principal reason the relative declined to continue as the caretaker for the children. The report opined that the "credible reports of mother's actual behavior in the community may be more significant and accurate indicators of the mother's present and future functioning than professional reports describing the mother in situations in which she is aware of being under scrutiny for a service provider's evaluation."

Furthermore and disturbingly, the report indicated mother recently had been arrested three times on prostitution related offenses.

In light of the latter information, the report again recommended that the court terminate reunification services and set the matter for a hearing to determine whether mother's parental rights should be terminated. Again, the court rejected that recommendation. It ordered that mother continue to receive reunification services and set the matter for yet another review hearing.

An 18-month review hearing began on July 6, 2009. The report prepared for that hearing again showed mixed results. Mother continued to participate in parenting classes and counseling with good results. She was described as showing a "high degree of motivation to reunify with her children and to comply with the reunification service plan." However, the report indicated there were still serious concerns. Although mother's prostitution arrests had been disclosed in the prior report, mother's social worker had not previously been able to discuss those arrests with mother. When the social worker did discuss the arrests with mother, the social worker learned some disturbing information. According to the report mother "talked about having first engaged in prostitution while in high school in San Francisco. She stated it 'was normal

in my high school' and she stated she 'tried it with friends a few times.' She acknowledged . . . engaging in prostitution in Oakland in February 2006, precipitating her arrest by Oakland [P]olice on 02/03/2006 for soliciting for prostitution on International Avenue. She stated she resumed prostituting in Richmond a few months ago, at about the time of the six-month (family reunification) review hearing. She stated she 'knew what she was getting into' from her previous experience. The mother stated that in recent months, from about the time of the six-month review hearing, she had engaged in soliciting for prostitution on the streets of Richmond about three nights a week. She stated she worked by herself, without a pimp or partner, and always went to motel rooms rather than her own residence, and used safe sex measures."

This conflicting evidence was explored at the review hearing. After considering the evidence presented, the court ruled the children would be at substantial risk if they were returned to mother's custody. Accordingly, the court terminated reunification services and set the matter for a hearing on November 25, 2009, to determine whether mothers parental rights should be terminated.

This writ petition followed.

II. DISCUSSION

A. Sufficiency of the Evidence

Mother contends the evidence was insufficient to support the trial court's conclusion that E. and N. would be at substantial risk if they were returned to her custody.

Section 366.22, subdivision (a), states that at an 18-month review hearing, "The court shall order the return of the child to the physical custody of his or her parent . . . unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." On appeal, a trial court's ruling that it would be detrimental to return a child to her parent's custody is reviewed under the substantial evidence test. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 974-975.) The reviewing court's task is to determine whether there is any substantial evidence, that is,

evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) Conflicts in the evidence are resolved in favor of affirming the challenged order and credibility of witnesses is a matter for the trier of fact. (*Ibid*.) The ultimate test is whether the trial court's ruling was reasonable in light of the whole record. (*Id*. at p. 1394.)

Here, the court explained in detail why it believed that E. and N. would be at risk if they were returned to mother's custody. As the court explained, "mother complied with her reunification service plan. She showed a lot of motivation in her attempts to reunify with her children, but there still remains a very mysterious event at the core of this case that prevents this Court from concluding that the underlying issues have been resolved because the Court has one question before it which is whether or not the parent has made significant progress, but the other part of that question is whether or not the parent has made significant progress to allow the children to be returned safely, and that is the part of the question that the Court cannot resolve in favor of returning the children. [¶] The Court has to look at the totality of the facts that are presented to the Court. And without going into all of the detail of what happened to bring these children to the Court's attention, I do have to state that we have unexplained, severe[,] serious injuries to these children. And to this day, these injuries remain unexplained. [¶] As mentioned earlier in the arguments, we had the broken clavicle, the broken fibula, the broken eye socket and the broken skull of these children. And these are not the types of injuries, as has been substantiated by the medical reports, not the type of injuries that would occur to children without someone deliberately doing something to them, and also they would not go unnoticed. [¶] And then looking at the totality of facts, we also have to look at the fact that the mother has sustained convictions that involve incidents of violence, the battery, the arrest for battery, the arrest for fights. She has shown in her history, despite her participation in services, some very serious problems with anger management. [¶] Also, the Court has a lot of difficulty in the truthfulness of the mother. A lot of argument has surrounded the recent arrest for prostitution in December and January and February of this year. And we now have information, based upon further information and

investigation that the mother had been involved in prostitution since high school. But the prostitution in and of itself is a crime involving moral turpitude, and that also gives the Court a lot of concern in evaluating the truthfulness of the stories that were presented to the medical providers and to the Court as to whether or not there is any knowledge about what happened to these children. [¶] . . . [¶] Also, the investigation does not substantiate the parents' theory as to how the injuries may have occurred. We have to go back and recall that the doctor's report indicated that the story that was provided to them by the mother about how the injuries might have occurred while the sister was babysitting are really not substantiated. The injuries would not have occurred in that way, nor did they occur at the same time. [¶] We also have, going back to the history of the violence, the physical aggression that has been reported towards the previous caretaker. [¶] And so when I take all of those into account, the types of injuries, the mysteriousness that still surrounds this case, the reports from the medical providers that are contrary to the stories that have been provided by the mother, the issues of truthfulness that are still unresolved in this case, this Court cannot say that . . . mother has made significant progress to allow the child to be returned safely."

All of the factors cited by the court are supported by the record. When E. and N. were only four months old, they suffered extremely serious injuries that may have been inflicted intentionally. The cause of those injuries has never been determined, and the explanation mother provided, that her sister caused them, was investigated and rejected. Mother has anger problems and a history of abusing others physically. Mother's lack of candor to child protection officials concerning her prostitution activities casts doubt on her truthfulness as a whole. Furthermore, given the well documented dangers of prostitution, the trial court could reasonably conclude that E. and N. would be at risk if they were placed in the home of a mother who sells herself on the streets of Richmond three nights a week. On this record, we do not hesitate to conclude the trial court's ruling was reasonable in light of the whole record. (*In re Savannah M., supra,* 131 Cal.App.4th at p. 1394.) The court's ruling is supported by substantial evidence.

Mother contends the trial court erred because it "focused on the cause of the injury to the children instead of on the progress and participation of the mother in her court-ordered treatment programs." This was wrong, mother contends because "there was no evidence offered at the contested 18-month review to even remotely suggest that mother was present when the minors were injured . . . ." We reject this argument because it is based on a false premise. The trial court specifically noted mother's participation in her treatment plan and the progress she had made. However, the court then went on to discuss other evidence that indicated the children would be at risk if they were returned to mother's custody and ruled that latter evidence outweighed the former. Furthermore, mother is simply wrong when she argues there was no evidence that she may have been present when her children were injured. E. and N. experienced serious injuries that may have been inflicted intentionally and the explanation mother provided for the injuries was not convincing. Mother herself has long-standing anger issues and has a history of abusing others physically. Although the lower court did not reach the issue directly, substantial evidence supports the conclusion that mother was not only present when the children were hurt, but that she was responsible for those injuries.

Mother also argues the insufficiency of the evidence is supported by *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738. In that case, the juvenile court refused to return four siblings to their parents based on allegations that father had abused one of the children sexually. No court ever examined whether the allegations were supported by evidence, and a psychologist determined it was unlikely that father had molested the child. (*Id.* at pp. 1741-1742.) Yet, the juvenile court concluded that it would be detrimental to return the children to their parents, relying in part on the parents' refusal to acknowledge that sexual molestation had occurred. (*Id*. at p. 1752.) Citing the lack of evidence of molestation, the *Blanca P.* court ordered the juvenile court to hold a new hearing on the molestation allegations. (*Id.* at p. 1759.) Here, as we have explained, there was strong evidence that the children would be at risk if returned to mother's custody. Unlike *Blanca P.*, the allegations here were not predicated on unsupported allegations.

Next, mother contends the court's finding of detriment is unsupported because she completed all the elements of her case plan. Even if were to assume that were true "[t]he fact [mother] satisfied the requirements of the reunification plan does not mean she was entitled to custody of the [minors] regardless of the substantial risk of detriment that reunification would have on the [minors'] . . . well-being." (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 901; see also *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141-1143.) Here, as we have explained, the trial court could reasonably conclude E. and N. were at risk if they were returned to mother's custody even though mother had successfully completed her case plan.

Mother also argues there is substantial evidence in the record that she "can accept responsibility through actions." While that may be true, there is also substantial evidence in the record that returning E. and N. to mother's custody would place them at substantial risk. On appeal we will affirm an order that is supported by substantial evidence even if other evidence in the record might have supported a contrary conclusion. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

B. Visitation

After terminating reunification services, the juvenile court ordered Child and Family Services to coordinate visitation pending the termination hearing and ordered that mother be permitted to visit E. and N. a minimum of one hour every month. Mother now contends the trial court abused its discretion when it declined to order more frequent visitation. Mother never raised this issue in the court below. She has forfeited the right to raise it on appeal. (*In re Anthony P.* (1995) 39 Cal.App.4th 635, 641.) The argument also is unpersuasive. Section 366.21, subdivision (h), states: "In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held . . . [t]he court shall continue to permit the parent . . . to visit the child pending the hearing unless it finds that visitation would be detrimental to the child." The court here followed the statutory mandate precisely. It ordered that mother be allowed to visit with E. and N. a minimum of one hour every month pending the termination hearing. We find no abuse of discretion and no error.

In arguing the court erred, mother relies primarily on *In re David D.* (1994) 28 Cal.App.4th 941. There, the trial court only allowed the mother a *single* visit with her children pending the termination hearing. (*Id.* at p. 955.) The *David D.* court ruled that was inadequate because it denied the mother the opportunity to avoid termination of her parental rights under the exception now found in section 366.26, subdivision (c)(1)(B)(i)[2] by showing she had visited them regularly. (*In re David D., supra,* 28 Cal.App.4th at p. 955.) *David D.* is not controlling here because the court ordered regular visitation. We find no error.

C. Adequacy of the Reunification Services

Mother contends the order terminating reunification services must be reversed because she did not receive adequate reunification services. Mother has forfeited the right to raise this argument because she did not raise it in the court below. (*In re Anthony P., supra,* 39 Cal.App.4th at p. 641.) We also reject the argument on the merits.

"'[T]he focus of reunification services is to remedy those problems which led to the removal of the children.' [Citation.] A reunification plan must be tailored to the particular individual and family, addressing the unique facts of that family. [Citation.] A social services agency is required to make a good faith effort to address the parent's problems through services, to maintain reasonable contact with the parent during the course of the plan, and to make reasonable efforts to assist the parent in areas where compliance proves difficult. [Citation.]" (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598.)

On appeal, we review a juvenile court's finding that an agency provided reasonable reunification services for substantial evidence. (*Katie V. v. Superior Court, supra,* 130 Cal.App.4th at p. 598.) In making that determination we must indulge in all legitimate and reasonable inferences to uphold the verdict. (*In re Misako R.* (1991) 2

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[2] Section 366.26, subdivision (c)(1)(B)(i) states that a compelling reason for avoiding termination arises when "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship."

Cal.App.4th 538, 545.) "If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed." (*Ibid.*)

Here, there is ample evidence to support the conclusion that mother received adequate reunification services. The serious injuries E. and N. suffered indicated mother had serious parenting deficiencies. The record indicates mother was provided a wide array of services to address that problem including individual counseling, family counseling, parenting education and anger management classes, and parental coaching and assessment. Based on this record the trial court reasonably could conclude mother was offered adequate reunification services.

Mother contends the services were inadequate because at one point, a social worker was laid off and it took approximately a month before a new social worker was appointed. The new social worker then took "several weeks" to "get up to speed on the case." Mother also notes there was a two-month delay between the point when the new social service worker determined that mother was not addressing her anger management problems adequately in therapy and when the social worker asked appellant's therapist to focus on that issue. The delays mother cites do show her reunification plan might not have been perfect, however "the services provided are often imperfect. [Citation.] 'The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.' [Citation.]" (*Katie V. v. Superior Court, supra*, 130 Cal.App.4th at pp. 598-599.) The services provided to mother were reasonable under the circumstances.

III. DISPOSITION

The petition for an extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Mother is barred in any subsequent appeal from making further challenges to orders terminating reunification services and setting a hearing under section 366.26. (§ 366.26, subd. (l).) Because the section 366.26 hearing is set for November 25, 2009, and in the interests of justice, our decision is final as to this court immediately.

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Jones, P.J.

We concur:

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Simons, J.

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Needham, J.